

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FISHER SAND & GRAVEL, CO.
d/b/a/ SOUTHWEST ASPHALT PAVING and
FISHER SAND & GRAVEL – NEW MEXICO, INC.,

Plaintiff,

v.

Case No. 1:10-cv-00635-RB-SMV

FNF CONSTRUCTION, INC.,
PULICE CONSTRUCTION, INC.,
GARY GIRON, individually and as Cabinet Secretary
of the New Mexico Department of Transportation,
MAX VALERIO, individually and as Deputy Secretary
of the New Mexico Department of Transportation,
JED BILLINGS, Chief Executive Officer
of FNF Construction, Inc., and
STEPHEN BASILA, President of
Pulice Construction, Inc.

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT FNF
CONSTRUCTION, INC.'S MOTIONS TO COMPEL NOS. 1 & 3 (DOC NOS. 206 & 208)**

THIS MATTER came before the Court on Defendant FNF Construction, Inc.'s Motion to Compel Discovery on July 22, 2013. The Court having reviewed the briefing, having heard arguments of counsel, rules that the motion is granted in part and denied in part as follows:

FNF CONSTRUCTION, INC.'S MOTION TO COMPEL NO. 1 (Doc. No. 206)

1. The parties have reached an agreement under which Plaintiffs will supplement their answers and responses to Interrogatory Nos. 7 and 8 as well as Document Request Nos. 4 and 70. Therefore, the motion will be denied as moot as it relates to these requests.

2. The motion is denied as to Interrogatory No. 9.

3. Counsel for FNF have informed the Court that Plaintiff has supplemented its response to Request for Production Nos. 12, 28, 29, but that counsel for FNF has not had time to review this material. The Court will reserve its ruling on the motion with respect to RFP Nos. 12, 28, & 29 until counsel for FNF has informed the judge of its satisfaction with the Plaintiff's supplemental production.

4. The motion is denied as moot as to Interrogatory No. 10 and Document Request No. 25.

5. The motion is denied as to Document Request No. 31.

6. The motion is granted in part and denied in part as to Interrogatory No. 17. The Plaintiff shall supplement its responses to identify lawsuits filed against Plaintiff between January 1, 2003 and the present. The motion is otherwise denied as to this Interrogatory.

7. The motion is granted as to Interrogatory No. 18.

8. The motion is denied as to Document Request Nos. 5, 23 and 71.

9. The motion is granted in part and denied in part as to Document Request Nos. 13 and 24. Plaintiffs shall produce, in response to these Requests, copies of contracts that Plaintiff or its subsidiaries have been awarded in New Mexico or Arizona. The motion is otherwise denied as to these Requests.

10. The motion is granted as to Document Request No. 18. To the extent that Plaintiff claims that the information sought is privileged, Plaintiff shall provide a privilege log for any documents which fall within the scope of the ordered production that have been withheld based on a claim of attorney-client privilege or work product.

11. The motion is granted as to Document Request Nos. 26, 64 and 65.

12. The motion is granted in part and denied in part as to Document Request for Production No. 51. Plaintiff shall produce, in response to this Request, prequalification documents submitted in Arizona or New Mexico from March 2008 to the present. The motion is otherwise denied as to these requests.

FNF CONSTRUCTION, INC.'S MOTION TO COMPEL NO. 3 (Doc. No. 208)

13. The parties have reached an agreement under which Plaintiff will supplement its answers and responses to Interrogatory Nos. 4 and 5. Therefore, the motion will be denied as moot as it relates to these requests.

14. The motion will be denied as moot as to Requests for Production Nos. 34-44 based on Plaintiff's prior supplementation of its responses to these requests.

15. With respect to Request for Production No. 75, the Court understands that Plaintiff has agreed to produce the requested documents subject to the terms of a confidentiality agreement applicable to these documents to be negotiated with counsel for Defendant. The Court therefore will reserve ruling on Request for Production No. 75.

16. The motion is denied as to Interrogatory No. 15.

17. The motion is granted as to Interrogatory No. 25.

18. The motion is granted in part and denied in part as to Document Request No. 52. Plaintiffs shall produce, in response to this Request, a document or documents that will evince the date of Plaintiff's buyout of Michael Fisher's ownership interest. The motion is otherwise denied as to this Request.

19. The motion is denied as moot as to Document Request No. 53.

20. The motion is denied as to Document Request No. 8.

21. The motion is granted in part and denied in part as to Document Request No. 33. The Plaintiff shall produce, in response to this Request, copies of any documents that it intend to rely on to establish that the alleged statement describing Plaintiff FSG as insolvent is false. The motion is otherwise denied as to this Request.

22. The motion is denied as to Interrogatory Nos. 19 and 20.

23. To the extent that FNF's motion was granted, Plaintiffs shall supplement their Answers and Responses, produce all responsive documents, and provide a log identifying any claims of privilege within 21 days from the date of entry of this Order.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge

Submitted By:

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